

UPDATE NEWSLETTER

August 2014 • Volume 1 • Issue 8

Montana and Nebraska approved as SARA states



Montana has been approved by the Western Interstate Commission for Higher Education (WICHE) to become a member of the WICHE State Authorization Reciprocity Agreement (W-SARA). At the same time, Nebraska has been approved by the Midwestern Higher Education Compact (MHEC) to join the Midwestern State Authorization Reciprocity Agreement (M-SARA).

These states join seven others (Indiana, North Dakota, Alaska, Colorado, Idaho, Nevada and Washington) in the nationwide SARA initiative that will make distance education courses more accessible to students across state lines and make it easier for states to regulate and institutions to participate in interstate distance education. The effort is funded by a \$2.3 million grant from Lumina Foundation.

The Montana University System (MUS) is comprised of 16 institutions, including two flagship universities, four regional universities, and ten two-year colleges. MUS currently serves 47,000 students. Montana also has three private colleges and seven tribal colleges. The designated SARA state portal agency is the Board of Regents of Higher Education for the State of Montana.

Nebraska is home to 52 postsecondary institutions with an enrollment of nearly 139,000. More than 137,000 students (duplicated headcount) are enrolled in online courses through Nebraska postsecondary institutions. Nebraska's Coordinating Commission for Postsecondary Education is the SARA state portal agency.

The SARA agreements are overseen by the National Council for State Authorization Reciprocity Agreements (NC-SARA) and are being implemented by the four regional higher education interstate compacts:

the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE). Once a state joins SARA, accredited degree-granting institutions in the state that offer distance education courses can seek approval to participate in SARA from their state. When approved, these institutions will be able to operate in other participating SARA states without seeking independent authorization. Participating in SARA is entirely voluntary for institutions, as it is for states.

"SARA allows states to focus on their home-state institutions, rather than on institutions from many other states," explained Marshall A. Hill, executive director of NC-SARA. "SARA can help expand educational offerings available to state residents and will significantly reduce costs for institutions that are active in online education, lessening this particular need to raise fees and thereby supporting affordability."

Currently (August 2014), nine states have joined SARA; necessary legislation has passed in 14 additional states, legislation is pending in two more, and three other states have determined that no legislation is needed to enable participation in SARA. Visit nc-sara.org for more information on state actions regarding SARA.

Some Background and a Status Report on State Authorization

The complex and confusing topic of state authorization of higher education institutions has grown even more murky over the past few weeks. Let's clarify the current state of the issue.

Part of the confusion occurs because the U.S. Department of Education uses the words "state authorization" in at least two ways. In the first instance, state authorization refers to the action that a state takes to approve (authorize) an institution offering postsecondary education to be established within the state. The legal background for that work is widely misunderstood; to lessen that misunderstanding I recommend a book by my good friend and colleague Alan Contreras – *College and State: Resources and Philosophies*.

As Alan explains, states have authorized postsecondary institutions for a very long time. That fact forms the basis of the state's role as part of our country's approach to postsecondary oversight and accountability – the so-called "triad" formed by the federal government, the states, and recognized accrediting bodies.

In October of 2010 the Department issued rules on this type of authorization: 34 CFR 600.9 (a) and (b). Those sections contain the conditions that a state's authorization action must meet in order for the Department to deem an institution participating in federal Title IV financial aid programs duly authorized by its state. Compliance with those conditions was to be met by July 1, 2014. This proposed rule was not challenged in court and remains in effect (more on that later).

The other main form of authorization – a newer expectation of the Department's, but not of states – is the state authorization of postsecondary distance education delivered within a particular state's borders. In the set of rules issued in October of 2010, 34 CFR 600.9 (c) stipulated that institutions offering distance education in a state other than their own needed to abide by the laws and rules of those other states and obtain whatever authorization those other states required. In addition, the Department said that an institution must be able to document that it had obtained such authorizations or show that the other state(s) did not require any such authorization.

That section of the rules drew widespread objections and was the subject of a lawsuit. Eventually the courts vacated (set aside) the rule because the Department did not fully follow required procedures during its development. That is still the case: there is at present no rule at the U.S. Department of Education requiring the state authorization of postsecondary distance education. But, very importantly, state laws are still in place.

Events over the past few months have sown additional confusion. On June 24, 2014, the Department indicated that it was extending, with conditions, the deadline contained in 600.9 (a) and (b) from July 1, 2014 to July 1, 2015. (See <https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-14721.pdf>)

Unfortunately, several higher education publications reported that the Department was deferring its rule on the state authorization of postsecondary distance education. As we've seen, there currently is no such rule to defer.

In a negotiated rulemaking session stretching from February to May of this year, the Department worked with negotiators to develop a new rule on distance education authorization. The final version of the rule left on the table at the conclusion of the sessions was controversial and did not secure the support of the negotiators. That meant that the Department was free to issue (or not issue) whatever proposed rule it chose on the topic. Many people (including the author of this piece) believed that the Department would likely issue a proposed rule on distance education authorization sometime this summer. We were wrong.

Following the failure of the negotiated rulemaking process to develop a rule on state authorization of distance education, several distance education groups and other individuals provided cautionary advice to the Department, offering suggestions and, in particular, urging them away from the "active review" approach set forth in the final version of the rule considered by the rulemaking panel. On June 25, 2014, in remarks at the CHEA Summer Workshop, Ted Mitchell, the new Under Secretary of Education, indicated that the Department would "pause" on developing new rules on state authorization, saying that "It's complicated, and we want to get it right."

So, in summary, where do things now stand?

- First and foremost, state laws and rules regulating the delivery of postsecondary education (distance and on-the-ground) are still in place. Institutions of all types are obligated to obey them.
- Because of that point, SARA (the State Authorization Reciprocity Agreements) remains clearly relevant, providing a streamlined alternative to the state-by-state approach institutions must currently follow to gain needed authorizations to serve students in states other than their own. SARA currently has seven member states; we anticipate having 20 member states by the end of 2014 and 40-45 by the end of 2015. See www.nc-sara.org for information and details of state actions regarding SARA.
- States have been given, with conditions, an extension (to July 1, 2015) to bring their processes for authorizing institutions that are located within their states into compliance with the Department's expectations and thereby support the integrity of the awarding of federal financial aid.
- The Department is going to take some additional time to consider its approach to the state authorization of postsecondary distance education.

This article was written by Marshall Hill, executive director of NC-SARA, and was featured in [Magna Publications Distance Education Report](#) (Volume 18, Number 14 - July 15, 2014).

Upcoming Presentations

SREB Electronic Campus Meeting
September 9, 2014
Louisville, Kentucky

Oregon Higher Education Coordinating Commission
September 11, 2014
Salem, Oregon

Accrediting Commission of Career Schools and Colleges (ACCSC) Professional Development Conference
September 19, 2014
Denver, Colorado

Radio Higher Ed features Marshall Hill in podcast

Marshall Hill, executive director of the National Council for State Authorization Reciprocity Agreements, was recently interviewed by Radio Higher Ed co-hosts, Kathryn Dodge, Alison Griffin and Elise Scanlon.

In the podcast, "[A Finer Point with Marshall Hill: Significant progress in Reciprocity for Distance Education Regulation.](#)" Hill provides an update on SARA's progress and discusses the potential impact of possible new federal regulations on state authorization of distance education. To access this thought-provoking conversation [click here](#).

A previous Radio Higher Ed podcast featuring Hill entitled "[Distance education efficiencies: An emerging state and institution partnership is also available by clicking here.](#)" In this podcast, Hill provides an overview of the State Authorization Reciprocity Agreements (SARA) initiative, the benefit of SARA to institutions of higher education and states, and the manner in which the initiative is governed.

The mission of Radio Higher Ed is to inform the public and challenge policy makers about postsecondary education policies, issues and their implications.



National Council for State Authorization Reciprocity Agreements

A voluntary, regional approach to state oversight of distance education

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